

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2003-0706, In the Matter of Elena S. Buchholz and Steven M. Buchholz, the court on October 4, 2004, issued the following order:

The petitioner, Elena Buchholz, appeals the provision of the parties' divorce decree awarding them joint custody of their son. She contends that the failure of the guardian ad litem (GAL) to advise her that he was equivocal in his report recommendation that she receive primary physical custody constituted unfair surprise. We affirm.

Citing Part I, Article 2 of the New Hampshire Constitution, the petitioner argues that her due process rights were violated because she did not receive notice that the GAL would deviate from his recommendation during trial, thereby providing her inadequate notice of adverse evidence. We have reviewed the record presented on appeal, including the transcript of the hearing, and conclude that the GAL's testimony was consistent with his report; that is, he concluded that both parties were good parents and he recommended that primary physical custody be awarded to the mother. That he testified on cross-examination that he was not strong and steadfast in his recommendation does not alter our conclusion. Contrary to the petitioner's assertion, we also find no evidence of bias.

In divorce cases involving contested custody, the trial court must resolve conflicts in testimony and determine the weight to be given the evidence. See Richelson v. Richelson, 130 N.H. 137, 143 (1987). A GAL report is not binding on the trial court "because the difficult decision regarding custody must be made on the basis of all the evidence." *Id.* (quotation and emphasis omitted). In this case there was sufficient evidence to support the trial court's order. Accordingly, we find no error.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

Clerk, Family Division at Brentwood 2001-M-0526

Honorable Gerald N. Taube

In Case No. 2003-0706, In the Matter of Elena S. Buchholz and Steven M. Buchholz, the court on October 4, 2004, issued the following order:

Page Two

Distribution continued:

Master Harriet J. Fishman
Doreen F. Connor, Esquire
Mary A. Dempsey, Esquire
Jocelyn A. Thomsen, Esquire
Mary M. Howie, Esquire
Gary L. Paradis, Esquire
Marcia McCormack, Supreme Court
Loretta S. Platt, Supreme Court
Irene Dalbec, Supreme Court
Case Manager
File